



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2013–0101]

[4500030114]

RIN 1018–AZ77

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Contiguous U.S. Distinct Population Segment of the Canada Lynx and Revised Distinct Population Segment Boundary

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the September 26, 2013, proposed revised designation of critical habitat for the contiguous U.S. distinct population segment (DPS) of the Canada lynx (*Lynx canadensis*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) and a draft environmental assessment of the proposed revised designation of critical habitat for the contiguous U.S. DPS of the Canada lynx, and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, the draft environmental assessment, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: In order to fully consider and incorporate public comment, the Service requests submittal of comments by close of business on **[INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]**. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES:

Document availability: You may obtain copies of the proposed rule and its

associated documents of the draft economic analysis and the draft environmental assessment on the Internet at <http://www.regulations.gov> at Docket No. FWS–R6–ES–2013–0101 or by mail from the Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Written Comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. Submit comments on the critical habitat proposal and associated DEA and draft environmental assessment by searching for Docket No. FWS–R6–ES–2013–0101, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit comments on the critical habitat proposal and associated DEA and draft environmental assessment by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2013–0101; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Jodi Bush, Field Supervisor, U.S.

Fish and Wildlife Service, Montana Ecological Services Field Office, 585 Shepard Way, Suite 1, Helena, MT 59601; telephone (406-449-5225); or facsimile (406-449-5339).

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed revised designation of critical habitat for the contiguous U.S. DPS of the Canada lynx (which we refer to as the Canada lynx DPS in the remainder of this document) that was published in the **Federal Register** on September 26, 2013 (78 FR 59430), our DEA and draft environmental assessment of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to

increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of the Canada lynx in the contiguous United States;

(b) The amount and distribution of Canada lynx habitat in the contiguous United States;

(c) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why; and

(d) What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their probable impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the Canada lynx and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on the benefits of including or excluding areas that exhibit these impacts.

(6) Information on the extent to which the description of economic impacts in the DEA is a reasonable estimate of the likely economic impacts and the description of the environmental impacts in the draft environmental assessment is complete and accurate.

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(8) Whether any areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

If you submitted comments or information on the proposed rule (78 FR 59430) during the initial comment period from September 26, 2013, to December 26, 2013, please do not resubmit them. Any such comments are incorporated as part of the public

record of this rulemaking, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. The final decision may differ from the proposed rule, based on our review of all information we receive during the comment periods.

You may submit your comments and materials concerning the proposed rule, DEA, or draft environmental assessment by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R6-ES-2013-0101, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Montana Ecological

Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule, the DEA, and the draft environmental assessment on the Internet at <http://www.regulations.gov> at Docket No. FWS–R6–ES–2013–0101, or by mail from the Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the Canada lynx DPS in this document. For more information on previous Federal actions concerning the Canada lynx DPS, refer to the proposed revised designation of critical habitat published in the **Federal Register** on September 26, 2013 (78 FR 59430). For more information on the Canada lynx DPS or its habitat, refer to the final listing rule published in the **Federal Register** on March 24, 2000 (65 FR 16052), the clarification of findings published in the **Federal Register** on July 3, 2003 (68 FR 40076), and the *Recovery Outline for the Contiguous United States DPS of Canada Lynx*, all of which are available online at the Service’s Species Profile website (<http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A073>) or from the Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On March 24, 2000, the Service published a final rule in the **Federal Register** designating Canada lynx in the contiguous United States as a distinct population segment (DPS) and listing the Canada lynx DPS as threatened under the Act (65 FR 16052). On July 3, 2003, we published a clarification of findings affirming the status of the DPS as threatened under the Act (68 FR 40076). On November 9, 2006, we published a final rule designating critical habitat for the Canada lynx DPS (71 FR 66008). On February 25, 2009, we published a final rule revising the designation of critical habitat for the Canada lynx DPS (74 FR 8616). On December 17, 2009, we published a 12-month warranted-but-precluded finding on a petition to change the final listing of the Canada lynx DPS to include New Mexico (74 FR 66937). These documents and others addressing the status and conservation of Canada lynx in the contiguous United States may be viewed and downloaded from the Service's website at:

<http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?scode=A073> or

<http://www.fws.gov/mountain-prairie/species/mammals/lynx/index.htm>.

On September 26, 2013, we published a proposed rule to revise the designation of critical habitat for the Canada lynx DPS (78 FR 59430). We proposed to designate approximately 41,547 square miles (mi²) (107,607 square kilometers (km²)) of critical habitat in five units located in northern Maine (Unit 1), northeastern Minnesota (Unit 2), northwestern Montana and northeastern Idaho (Unit 3), north-central Washington (Unit 4), and southwestern Montana and northwestern Wyoming (Unit 5). That proposal had a

90-day comment period, ending December 26, 2013. We will publish in the **Federal Register** a final revised critical habitat designation for the Canada lynx DPS on or before September 1, 2014.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Changes from Previously Proposed Critical Habitat

As we indicated in our September 26, 2013, proposed rule (78 FR 59430), we are evaluating information from several national forests in Montana that have refined their mapped Canada lynx habitat. These refinements may result in changes (reductions,

additions, or both) to the critical habitat boundaries designated in the final rule for units 3 and 5. Additionally, the Service continues to work with the Bureau of Land Management (BLM) in Wyoming to determine the most appropriate boundary for the southern and southeastern critical habitat additions to Unit 5 that we described in the proposed rule. In the final rule, we anticipate some changes to units 3 and 5 because of these refinements, which are based on the best available habitat mapping information.

Consideration of Impacts under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider, among other factors, the additional regulatory benefits that an area would receive through the analysis under section 7 of the Act addressing the destruction or adverse modification of critical habitat as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies); the educational benefits of identifying

areas containing essential features that aid in the recovery of the listed species; and any ancillary benefits triggered by existing local, State, or Federal laws as a result of the critical habitat designation.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to incentivize or result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of Canada lynx, the benefits of critical habitat include public awareness of the species' presence and the importance of habitat protection, and, where a Federal nexus exists, increased protection of Canada lynx habitat due to protection from adverse modification or destruction of critical habitat. In practice, actions with a Federal nexus exist primarily on Federal lands or for projects undertaken, authorized, funded, or otherwise permitted by Federal agencies.

The final decision on whether to exclude any areas in accordance with section 4(b)(2) of the Act will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a DEA concerning the proposed revised critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area proposed for critical habitat designation. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species.

The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated

impacts are those that would not be expected to occur in the absence of a critical habitat designation for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs arising from the species' listing under the Act. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional section 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed revised designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Canada lynx DPS (Industrial Economics, Inc. 2014). We began by conducting a screening analysis of the proposed revised designation of critical habitat to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of

critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether proposed critical habitat units are unoccupied by the species, may require additional management or conservation efforts as a result of the critical habitat designation, and may incur incremental economic impacts. This screening analysis and the information contained in our IEM are what we consider our DEA of the proposed revised critical habitat designation for the Canada lynx DPS, which is summarized in the narrative below.

Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the Executive Orders' regulatory analysis requirements, our effects analysis under the Act may take into consideration both direct and indirect impacts to affected entities, where practicable and reasonable. If sufficient data are available, we assess, to the extent practicable, the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas proposed for revised critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Canada lynx DPS, we first identified, in the IEM dated April 18, 2014, probable

incremental economic impacts associated with the following categories of activities:

Agriculture, Border Protection, Conservation/Restoration, Development, Fire Management, Forest Management, Mining, Oil and Gas, Recreation, Renewable Energy, Silviculture/Timber, Transportation, Tribes, and Utilities. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; it only affects activities conducted, funded, permitted, or authorized by Federal agencies.

Because the Canada lynx DPS has been listed as threatened under the Act since 2000, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement in areas where Canada lynx may be present and that may affect the species. If we finalize this proposed revised critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process that already considers jeopardy to the listed DPS. Because all of the areas proposed as revised critical habitat are currently occupied by Canada lynx populations, their designation will not result in new areas in which section 7 consultations would be required. Therefore, disproportionate impacts to any geographic area or sector are not likely as a result of the critical habitat designation.

In our IEM, we attempted to clarify the distinction between the effects attributable

to the Canada lynx DPS being listed and those likely to result from critical habitat designation (i.e., the difference between the jeopardy and adverse modification standards). Because the designation of critical habitat for the Canada lynx DPS was not proposed concurrently with the listing, we are better able to discern, based on a comparison of the history of section 7 consultations in the absence of critical habitat and consultations since the previous designation in 2009, which impacts are attributable to the DPS's listing and which are likely to result solely from the revised critical habitat designation currently proposed. Additionally, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical and biological features identified for critical habitat are the same features essential for the life requisites of the species; (2) all areas proposed for revised designation of critical habitat are currently occupied by Canada lynx populations; (3) 89 percent of the area currently proposed for designation has been designated as Canada lynx critical habitat since March 2009, and another 4.8 percent was designated lynx critical habitat from March 2009 until September 2010, when critical habitat in Washington State was enjoined by the U.S. District Court for the District of Wyoming; and (4) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Canada lynx DPS would also likely adversely affect the essential physical and biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline and incremental impacts of critical habitat designation for this DPS. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed revised critical habitat designation.

The proposed revised critical habitat designation for the Canada lynx DPS includes approximately 41,547 mi² (107,607 km²) of Federal, State, Tribal, and private lands in five units located in northern Maine (Unit 1), northeastern Minnesota (Unit 2), northwestern Montana and northeastern Idaho (Unit 3), north-central Washington (Unit 4), and southwestern Montana and northwestern Wyoming (Unit 5). All of the areas proposed as revised designated critical habitat were occupied by Canada lynx at the time of listing and currently support persistent Canada lynx populations.

Unit 1 includes 11,162 mi² located in northern Maine in portions of Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties. Land ownership within Unit 1 is 91.7 percent private, 7.4 percent State, and 0.8 percent Tribal; there are no Federal lands. Unit 2 includes 8,147 mi² located in northeastern Minnesota in portions of Cook, Koochiching, Lake, and St. Louis Counties, and the Superior National Forest. Land ownership within Unit 2 is 47.4 percent Federal, 33.5 percent State, 18.1 percent private, and 1.0 percent Tribal. Unit 3 includes 10,474 mi² located in northwestern Montana and a small portion of northeastern Idaho in portions of Boundary County in Idaho and Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell, and Teton Counties in Montana. Land ownership within Unit 3 is 82.6 percent Federal, 3.6 percent State, 10.2 percent private, and 3.5 percent Tribal. Unit 4 includes 1,999 mi² located in north-central Washington in portions of Chelan and Okanogan Counties and includes mostly Okanogan-Wenatchee National Forest lands as well as BLM lands in the

Spokane District and Loomis State Forest lands. Land ownership within Unit 4 is 91.5 percent Federal, 8.2 percent State, and 0.2 percent private; there are no Tribal lands. Unit 5 includes 9,766 mi² located in Yellowstone National Park and surrounding lands of the Greater Yellowstone Area in southwestern Montana and northwestern Wyoming. Proposed critical habitat in this unit is located in Carbon, Gallatin, Park, Stillwater, and Sweetgrass Counties in Montana; and Fremont, Lincoln, Park, Sublette, and Teton Counties in Wyoming. Land ownership within Unit 5 is 96.9 percent Federal, 0.3 percent State, and 2.8 percent private; there are no Tribal lands.

Because all the areas proposed as revised designated Canada lynx critical habitat are occupied by Canada lynx, consultation under section 7 of the Act is already required for projects in these areas that may affect Canada lynx. These consultations normally focus on potential impacts to Canada lynx foraging habitat, in particular winter snowshoe hare habitats. In these areas, any actions that may affect the Canada lynx or its habitat would also affect designated critical habitat. It is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the Canada lynx DPS. Further, because most (89 percent) of the proposed area has been designated as critical habitat for Canada lynx since 2009, consultations in these areas already must address the adverse modification standard, and no additional conservation measures or associated administrative or other costs are expected. Therefore, additional administrative costs are only expected in the 11 percent of the

proposed critical habitat that is not already designated. While the additional analysis necessary to address adverse modification in these areas will require time and resources by both the Federal action agency and the Service, we believe that, in most circumstances, these costs would be predominantly administrative in nature and would not be significant.

Areas proposed for designation that are not currently designated include: (1) All of Unit 4 (1,999 mi² of predominantly Federal [U.S. Forest Service] lands in northern Washington); (2) an additional 521 mi² of mostly private commercial timber lands in Unit 1 (northern Maine); and (3) an additional 259 mi² of mostly Federal (BLM and National Park Service) lands in Unit 5 (northwestern Wyoming). The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. Activities we expect will be subject to consultations that may involve private entities as third parties are residential and commercial development that may occur on private lands. However, the cost to private entities within these sectors is expected to be relatively minor and, therefore, not significant.

The annual administrative burden to address adverse modification in areas proposed but not currently designated as critical habitat is unlikely to reach \$100 million. Therefore, future probable incremental economic impacts are not likely to exceed \$100 million in any single year and disproportionate impacts to any geographic area or sector

are not likely as a result of the proposed revised critical habitat designation.

As we stated above, we are soliciting data and comments from the public on the DEA and the draft environmental assessment, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude areas from critical habitat if we determine that the benefits of excluding the areas outweigh the benefits of including the areas, provided the exclusions will not result in the extinction of this DPS.

Required Determinations—Amended

In our September 26, 2013, proposed rule (78 FR 59430), we indicated that we would defer our determination of compliance with several statutes and executive orders until we had evaluated the probable effects on landowners and stakeholders and the resulting probable economic impacts of the designation. Following our evaluation of the probable incremental economic impacts resulting from the designation of critical habitat for the Canada lynx DPS, we have affirmed or amended our determinations below. Specifically, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy Supply, Distribution, or Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of

1995 (44 U.S.C. 3501 *et seq.*), and the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951). However, based on our evaluation of the probable incremental economic impacts of the proposed revised designation of critical habitat for the Canada lynx DPS, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 12630 (Takings), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

The Service’s current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized,

funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7 only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed revised critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed revised designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revised critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial RFA analysis is not required.

E.O. 12630 (Takings)

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential

takings implications of designating critical habitat for the Canada lynx DPS in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding or assistance or that require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the Canada lynx DPS. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights are anticipated from this designation. Based on information contained in the economic analysis assessment and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for the Canada lynx DPS would not pose significant takings implications for lands within or affected by the revised designation.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

When the range of a species includes States within the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, pursuant to that court's ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F .3d 1429 (10th Cir.

1996), we complete an analysis on proposed critical habitat designations pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA). The range of the Canada lynx DPS is partially within the States of Colorado, New Mexico, Utah, and Wyoming, which are within the Tenth Circuit. Accordingly, we have prepared a draft environmental assessment to identify and disclose the environmental consequences resulting from the proposed revised designation of critical habitat for the Canada lynx DPS.

The draft environmental assessment presents the purpose of and need for critical habitat designation; the proposed action and alternatives; and an evaluation of the direct, indirect, and cumulative effects of the alternatives under the requirements of NEPA as implemented by the Council on Environmental Quality regulations (40 CFR 1500 *et seq.*) and according to the Department of the Interior's NEPA procedures.

The draft environmental assessment will be used by the Service to decide whether or not critical habitat will be designated as proposed; if the proposed action requires refinement, or if another alternative is appropriate; or if further analyses are needed through preparation of an environmental impact statement. If the proposed action is selected as described (or is changed minimally) and no further environmental analyses are needed, then a finding of no significant impact (FONSI) would be the appropriate conclusion of this process. A FONSI would then be prepared for the environmental assessment. We are seeking data and comments from the public on the draft

environmental assessment. Comments may be submitted by one of the methods listed in the **ADDRESSES** section.

Authors

The primary authors of this notice are the staff members of the Montana Ecological Services Field Office, Region 6, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Date: _____ June 13, 2014 _____

_____ Rachel Jacobsen _____

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

Billing Code 4310-55-P

[FR Doc. 2014-14400 Filed 06/19/2014 at 8:45 am; Publication Date: 06/20/2014]